

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36196

STATE OF IDAHO,)	2010 Unpublished Opinion No. 362
)	
Plaintiff-Respondent,)	Filed: February 26, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
GARY PAYNE,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John T. Mitchell, District Judge.

Order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Sarah E. Tompkins, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

Before GUTIERREZ, Judge, GRATTON, Judge
and MELANSON, Judge

PER CURIAM

Gary Payne was charged with four counts of issuing a check without funds and with seven counts of grand theft, with a persistent violator enhancement. Pursuant to a plea agreement, Payne pled guilty to one count of issuing a check without funds and to one count of grand theft and the state agreed to dismiss the remaining charges. After the district court reviewed the presentence investigation report, it rejected the plea agreement and Payne withdrew his guilty plea. Pursuant to a second plea agreement, Payne pled guilty to two counts of issuing a check without funds, Idaho Code § 18-3106, and to two counts of grand theft, §§ 18-2403, 18-2407, and the state dismissed the remaining charges. Payne failed to appear for sentencing and the district court issued a warrant for his arrest. A sentencing hearing was held at a later date and the district court sentenced Payne to concurrent unified terms of fourteen years, with two years

determinate, for each count of grand theft and to three years indeterminate for each count of issuing a check without funds. Payne filed an Idaho Criminal Rule 35 motion for reduction of sentence, which the district court denied. Payne appeals from that denial contending that the district court abused its discretion by denying his Rule 35 motion.

A Rule 35 motion is a request for leniency which is addressed to the sound discretion of the sentencing court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007).

Applying the foregoing standards and having reviewed the record, we conclude that the district court did not abuse its discretion by denying Payne's Rule 35 motion for reduction of sentence. Accordingly, the order of the district court denying Payne's Rule 35 motion is affirmed.